



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/711,401

09/16/2004

James P. Schalla

03-1241

5400

64722

7590

06/05/2007

OSTRAGER CHONG FLAHERTY & BROITMAN, P.C.

570 LEXINGTON AVENUE

FLOOR 17

NEW YORK, NY 10022-6894

EXAMINER

WILKENS, JANET MARIE

ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

06/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/711,401	Applicant(s) SCHALLA, JAMES P.	
	Examiner Janet M. Wilkens	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 08 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 23-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3637

Election/Restrictions

Claims 23-38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on February 8, 2007.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

(Namely, it is improper to use the phrase "the present invention" in an abstract.)

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 4, 14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly

Art Unit: 3637

claim the subject matter which applicant regards as the invention. For claims 3, 4, 14 and 15, "said plurality of fasteners" lacks antecedent basis.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dyer et al (3,311,434). Dyer teaches a cart comprising: a one-piece plastic shell (41) having insulation (46) and an inner panel/base layer (48) included therewith. The shell includes two sides and a top. The other sides include doors/decorative panels (34,36) with hinges (38) attached thereto and there is a bottom (18) attached to the shell. Also on the cart are casters (20). For claim 1, Dyer fails to teach that the shell includes the bottom portion of the cart. However, to make formerly separate features of a structure from a single element involves only routine skill in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the cart of Dyer by making the two sides, top and bottom all one piece, for aesthetic reasons, to simplify construction of the cart, etc. Please note that product by process limitations, e.g. reaction injection molded, are given no weight in a claim.

Art Unit: 3637

Also, it should be noted that intended use/"for" statements are given no weight in a claim.

For claim 6, although Dyer teaches tray members (16), no tray member coupled to the top is disclosed. However, to add material such as VECLRO to the underside of one of more of the trays and to the top of the cart would allow a tray(s) to be set on the cart in a more secure manner so that the contents on the tray and/or the tray itself can be inspected, temporarily set, etc on the top of the cart.

Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dyer in view of Cunningham (2,725,271). As stated above, Dyer teaches the limitations of claim 1, including a cart with insulation material therein. For claim 2, Dyer fails to teach that the material has fasteners embedded therein.

Cunningham teaches a frame and hinge fasteners (see Fig. 12) embedded within insulation of a door member. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the door/cart connection of Dyer by using alternate hinges therein, i.e. using the embedded hinges of Cunningham therein instead of the external hinges presently used, since these hinges are functional equivalents and either would work equally well between the doors and cart of Dyer. The hinges of Cunningham, if used in the doors of Dyer, providing more discrete hardware and providing hinges that are reinforced.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dyer in view of Greenwald (1,872,733). As stated above, Dyer teaches the limitations of claim 1, including a cart with insulation material

Art Unit: 3637

within an inner and outer shell therein. Dyer also teaches protruding shelf members (50) therein. For claims 9 and 10, Dyer fails to teach that the inner shell has recessed shelf grooves therein. Greenwald teaches recessed shelf grooves (B). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the inner shell of Dyer by using alternate shelf holding means therein, i.e. using the recessed members of Greenwald therein instead of the protruding members presently used, since these members are functional equivalents and either would work equally well for holding the shelves within the cart. The recessed members of Greenwald, if used in the cart of Dyer, providing less obtrusive shelf holding means inside the cart.

Claims 11, 12, 14-19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dyer in view of Kesling (3,091,946). Dyer teaches a cart comprising: a one-piece plastic shell (41; inherently impermeable to fluids) having insulation (46) and an inner panel/base layer (48) included therewith. The shell includes two sides and a top. The other sides include doors/decorative panels (34,36) with hinges (38) attached thereto and there is a bottom (18) attached to the shell. Also on the cart are casters (20). First for claim 11, Dyer fails to teach that the shell includes the bottom portion of the cart. However, to make formerly separate features of a structure from a single element involves only routine skill in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the cart of Dyer by making the sides, top and bottom all one piece, for aesthetic reasons, to simplify construction of the cart, etc. Second, for claims 11 and 12, Dyer fails to teach

Art Unit: 3637

reinforcement members within the insulation. Kesling teaches the use of fiberglass in another material for reinforcement purposes (column 5, lines 34-58). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the cart of Dyer by adding fiberglass particles in the insulation, such as is taught by Kesling, for strengthening purposes.

For claim 17, although Dyer teaches tray members (16), no tray member coupled to the top is disclosed. However, to add material such as VECLRO to the underside of one of more of the trays and to the top of the cart would allow a tray(s) to be set on the cart in a more secure manner so that the contents on the tray and/or the tray itself can be inspected, temporarily set, etc on the top of the cart.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dyer in view of Kesling as applied to claims 11, 12, 14-19 and 22 above, and further in view of Cunningham. As stated above, Dyer in view of Kesling teaches the limitations of claim 11, including a cart with insulation material therein. For claims 13 and 14, Dyer fails to teach that the material has fasteners embedded therein. Cunningham teaches a frame and hinge fasteners (see Fig. 12) embedded within insulation of a door member. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the door/cart connection of Dyer in view of Kesling by using alternate hinges therein, i.e. using the embedded hinges of Cunningham therein instead of the external hinges presently used, since these hinges are functional equivalents and either would work equally well between the doors and cart of Dyer. The hinges of

Cunningham, if used in the doors of Dyer, providing more discrete hardware and providing hinges that are reinforced.

Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dyer in view of Kesling as applied to claims 11, 12, 14-19 and 22 above, and further in view of Greenwald. As stated above, Dyer in view of Kesling teaches the limitations of claim 11, including a cart with insulation material within an inner and outer shell therein. Dyer also teaches protruding shelf members (50) therein. For claims 20 and 21, Dyer in view of Kesling fails to teach that the inner shell has recessed shelf grooves therein. Greenwald teaches recessed shelf grooves (B). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the inner shell of Dyer in view of Kesling by using alternate shelf holding means therein, i.e. using the recessed members of Greenwald therein instead of the protruding members presently used, since these members are functional equivalents and either would work equally well for holding the shelves within the cart. The members of Greenwald, if used in the cart of Dyer, providing less obtrusive shelf holding means inside the cart.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (571) 272-6869. The examiner can normally be reached on Monday-Thursday.

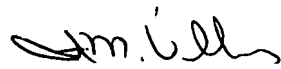
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax

Art Unit: 3637

phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Wilkins
May 29, 2007


JANET M. WILKENS
PRIMARY EXAMINER
